



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/163258

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on February 10, 2015.

The issue for determination is whether the agency met its burden to show it correctly calculated petitioner's assets.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julie Miller, ESS

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County and has been a recipient of MA (Institutional) since January 2014.
2. In December 2014, the petitioner had a review to continue her MA.

3. Through various notices issued on December 18, 2014, January 14, 2015 and January 30, 2015 the agency advised the petitioner that she would no longer be eligible for MA effective January 1, 2015 due to being over the asset limit.

DISCUSSION

Medicaid is a state/federal program that provides health coverage for Wisconsin residents that are elderly, blind, or disabled or receive Wisconsin Well Woman Medicaid. Medicaid is also known as Medical Assistance, MA, and Title 19. See *Medicaid Eligibility Handbook (MEH)*, §1.1.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. An individual is financially eligible for EBD-MA if the total value of all non-exempt liquid assets does not exceed \$2,000. Wis. Stats. §49.47(4)(b). The clear, unambiguous language of both Wis. Stat. §49.47(4)(b), and Wis. Admin. Code §DHS 103.08(1), states that eligibility cannot exist prior to the date on which all eligibility requirements are met. Until the actual date an individual's liquid assets fall below \$2,000, an individual is ineligible for MA.

In this case, the agency agreed that the sole issue was whether or not the petitioner's assets exceeded the \$2000 limit. The agency's position was that it was counting the petitioner's stocks and checking account which put her over the limit. The heart of the issue is how to count the value of petitioner's checking account. In this case, the agency used the value of the checking account per the 5th day of the month, which was the bank's cutoff date in its statement. The petitioner argues that the value of the checking account should be taken from the last day of the month per the banking statement. Then, after subtracting out the income received for that month, the petitioner is MA eligible. See *MEH* §16.1, which states, "Do not count income as an asset in the month it was received when determining the countable asset amount."

The petitioner correctly cites to Wis. Adm. Code §DHS 103.08 (when eligibility can begin) and the *MEH* §2.8.2 (asset eligibility in a backdate month. Indeed, the Department of Health Services (DHS) has already decided this matter in *In the Matter of* [REDACTED], Final Decision, Case No. MED-51/59884 (issued January 16, 2004), wherein the Deputy Secretary of the DHS adopted the administrative law judge's Proposed Decision which stated,

A person is certified for MA with a begin date of the 1st of the month in which the person met all eligibility conditions. Thus, asset eligibility is determined by whether or not the person had excess assets on the last day of the month. If the person was asset eligible on the last day of the month, the person's eligibility begins on the 1st of that month.

The agency has not offered any evidence to support its determination that the assets should be counted on the 5th day of the month as it seeks here. Accordingly, I must find that it has not met its burden to show that it was correctly counting the value of the checking account asset. As such, I am remanding the matter so that the agency can redetermine her asset eligibility, and in doing so, using the value of the petitioner's checking account as of the last day of the month.

CONCLUSIONS OF LAW

The agency has not met its burden to show it correctly calculated petitioner's assets.

THEREFORE, it is

ORDERED

The matter is remanded to the agency so that it can redetermine petitioner's MA eligibility, using the value of the petitioner's checking account as of the last day of the month to determine the value of that asset, and to issue a notice of decision to petitioner regarding same. These actions shall be taken within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 31st day of March, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 31, 2015.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability
Attorney Charles Stansberry Jr.